

EXHIBIT A

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF LINCOLN
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10 OHIO CASUALTY INSURANCE
11 CORPORATION, as Subrogee of IRIEN
JENNINGS DBA TOMFOOLERY PIZZA PUB,

12 Plaintiff,

13 v.

14 APPLE INC.,

15 Defendant.

No.

SUMMONS

16 TO DEFENDANT: Apple Inc.

17 A lawsuit has been started against you in the above-entitled court by the above-
18 named Plaintiff. Plaintiff's claim is stated in the written Complaint, a copy of which is
19 served upon you with this summons.
20

21 In order to defend against this lawsuit, you must respond to the Complaint by
22 stating your defense in writing and serve a copy upon the person signing this Summons
23 within twenty (20) days after service of this Summons, exclusive of the date of service,
24 of a default judgment may be entered against you without notice. A default judgment is
25 one where the Plaintiff is entitled to what it asks for because you have not responded. If
you serve a Notice of Appearance on the undersigned person, you are entitled to notice

SUMMONS - 1

LAW OFFICES OF MARK DIETZLER
ATTORNEYS AT LAW
1001 FOURTH AVENUE, SUITE 3300
SEATTLE, WA 98154-1101
(206) 633-1310 FAX (866) 546-5102

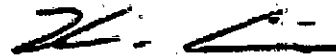
1 before a default judgment may be entered.

2 If you wish to seek the advice of an attorney, you should do so promptly so that
3 your written response, if any, may be served on time.

4 This Summons is issued pursuant to the Superior Court Rules of the State of
5 Washington.
6

7 Dated: April __19__, 2019

8 LAW OFFICES OF MARK DIETZLER
9

10 

11 Kevin F. Smith, WSBA #45412
12 Attorney for Plaintiff OHIO CASUALTY
13 INSURANCE CORPORATION, as Subrogee of
14 IRIEN JENNINGS DBA TOMFOOLERY PIZZA
15 PUB
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR AND IN THE COUNTY OF LINCOLN

OHIO CASUALTY INSURANCE
CORPORATION, as Subrogee of IRIEN
JENNINGS DBA TOMFOOLERY PIZZA PUB

Plaintiff,

v.

APPLE INC.;

Defendant.

No.

COMPLAINT FOR DAMAGES

COMES NOW the Plaintiff, OHIO CASUALTY INSURANCE CORPORATION, as
Subrogee of IRIEN JENNINGS DBA TOMFOOLERY PIZZA PUB, by and through its
undersigned counsel of record and alleges as follows:

I. JURISDICTION AND VENUE

1.1 That at all times herein mentioned, Plaintiff, OHIO CASUALTY INSURANCE
CORPORATION, was, and now is a corporation duly organized and existing under the
laws of the State of Washington, authorized to conduct business as a multiple line
insurance business in the State of Washington. At all times herein mentioned IRIEN
JENNINGS DBA TOMFOOLERY PIZZA PUB ("INSURED") was the insured of
Plaintiff under a policy of insurance issued to it by Plaintiff.

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- 1 1.2 That at all times herein mentioned, the INSURED business is located at 101 NW Main
2 Street, City of Wilbur, County of Lincoln, State of Washington 99185.
- 3 1.3 That at all times herein mentioned, Defendant, APPLE, INC. is a California Corporation
4 located at 1 Apple Park Way, Cupertino, CA 95014-0642 doing business in Lincoln
5 County, Washington.
- 6 1.4 On information and belief, the damages occurred to INSURED, IRIEN JENNINGS
7 DBA TOMFOOLERY PIZZA PUB, at its business at 101 NW Main Street, City of
8 Wilbur, County of Lincoln, State of Washington 99185 (PROPERTY).
- 9 1.5 That all acts and omissions of the defendant as herein complained of occurred in the City
10 of Wilbur, County of Lincoln, State of Washington.
- 11 1.6 That the present action and claim is based upon the provisions of Washington law.
- 12 1.7 That this court has full and proper personal jurisdiction over all of the parties hereto and
13 over the subject matter herein.
- 14 1.8 Venue is proper in Lincoln County Superior Court pursuant to RCW 4.12.020(3).

15 **II. PARTIES**

- 16 2.1 Plaintiff, OHIO CASUALTY INSURANCE CORPORATION, at all times herein
17 mentioned, insured IRIEN JENNINGS DBA TOMFOOLERY PIZZA PUB, under a
18 policy of insurance, which covered, among other things, the subject business, under the
19 terms of which Plaintiff insured against, among other risks, certain loss or damage by
20 reason of negligence to said property.
- 21 2.2 That at all times herein mentioned, the Insured, IRIEN JENNINGS DBA TOMFOOLERY
22 PIZZA PUB place of business is located at 101 NW Main Street, Wilbur, Washington
23 99185.

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2.3 That at all times herein mentioned, the Defendant, Apple Inc. place of business is located at One Apple Park WY, Cupertino, CA 95014. Its Registered Agent is CT Corporation System, 818 West Seventh Street, Suite 930, Los Angeles, CA 90017. Defendant, APPLE, INC., at all times herein mentioned, is the manufacturer of the 2007 Apple Mac Book Pro laptop computer, which was involved in the fire loss hereinafter alleged.

III. FACTUAL BACKGROUND TO CLAIM FOR NEGLIGENCE

3.1 The case arises out of a business fire that occurred on August 27, 2016, at the TOMFOOLERY PIZZA PUB located at 101 NW Main Street, Wilbur, Lincoln County, Washington 99185. The fire started in the lounge area of the restaurant.

3.2 On August 27, 2016, insured, IRIEN JENNINGS DBA TOMFOOLERY PIZZA PUB had been working on her Mac Book Pro laptop and had an update downloading.

3.3 Plaintiff is informed and believes and thereon alleges that the fire loss was the result of a defective lithium battery for Insured's Mac Book Pro laptop computer.

3.4 Plaintiff is informed and believes and thereon alleges that the fire originated with the overheating of the lithium battery in the Mac Book Pro laptop computer, that the Insured, Irien Jennings was using in the lounge area of the Tomfoolery Pizza Pub.

3.5 Prior to August 27, 2016, APPLE INC. manufactured the subject "PRODUCT", Mac Book Pro laptop computer, negligently manufactured, maintained, controlled, managed, packaged with a defective lithium battery and/or entrusted an employee(s) to inspect for inconsistencies, tears, missing parts, and final inspections prior to shipping out to their sales avenues. In other words, APPLE INC. was negligent in following industry standards when they installed, repaired, maintained, designed, manufactured, supplied, retailed, packaged with a defective lithium battery assembled and/or modified the PRODUCT.

3.6 Defendant, APPLE INC's actions were negligent and below the standard of care required by the laws of the State of Washington.

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1 3.7 Defendant, APPLE INC's, actions were negligent in installing defective lithium
2 batteries in their Products that is packaged with the PRODUCT.

3 IV. FACTUAL BACKGROUND TO CLAIM FOR
4 STRICT PRODUCT LIABILITY

4 4.1 That APPLE INC were at all times herein mentioned engaged in some aspect in the
5 business of manufacturing, selling, marketing, repairing, assembling, customizing,
6 installing, or providing to members of the general public, the PRODUCT or its
7 component parts herein described as a Mac Book Pro laptop computer. The subject
8 PRODUCT was manufactured, designed, assembled, repaired, retrofitted, marketed,
9 packaged with a defective lithium battery and sold by the Defendant to be used in the
10 manner herein described.

11 4.2 The PRODUCT sold by the Defendant reached the foreseeable user and/or consumer
12 without substantial change in the condition in which it was at the time it was sold.

13 4.3 The subject PRODUCT sold by the Defendant was in a defective condition, and
14 unreasonably dangerous when it left the hands of the defendant and did not meet the
15 reasonable expectations of the ordinary consumer and user. Said defective condition
16 included, but is not limited to design and manufacturing defects in said PRODUCT
17 which caused substantial property damage to the IRIEN JENNINGS DBA
18 TOMFOOLERY PIZZA PUB's Business property.

19 4.4 The subject PRODUCT was defectively designed, assembled, manufactured, tested and
20 certified. Defendant was aware of, or should have been aware of, the defects with a
21 lithium battery and/or deficiencies including, but not limited to, the defects in the
22 subject PRODUCT and/or its specifications. Plaintiff is informed and believes and
23 thereon alleges, that the Defendant failed to adequately warn owners and users of the
24 defects in a timely and reasonable manner.

25 4.5 The Defendant placed the PRODUCT into the channels or streams of commerce in a
26 defective condition and the Defendant is strictly liable to Plaintiff under RCW 7.72.030
27 and applicable statutes and case law for the damages set forth herein.
28

1 4.6 On or about August 27, 2016 as a direct and proximate result of the aforementioned
2 design and manufacturing defects in said PRODUCT and its component parts, the
3 PRODUCT failed and caused fire damage to the PROPERTY.

4 V. FACTUAL BACKGROUND TO CLAIM FOR
5 BREACH OF IMPLIED AND EXPRESS WARRANTIES

6 5.1 Prior to August 27, 2016, and prior to the time the PRODUCT was being used by the
7 INSURED in the subject incident, the Defendant impliedly warranted to members of
8 the general public, including the INSURED, that the PRODUCT was of merchantable
9 quality and safe for use for which it was intended by the Defendant.

10 5.2 The PRODUCT was not safe for its intended use nor was it of merchantable quality as
11 impliedly warranted by the Defendant in that it was defectively designed, manufactured
12 and marketed with a defective lithium battery that was thereby dangerously exposing
13 the user of said PRODUCT and those around said user to serious injury.

14 5.3 After the INSURED suffered the damages complained of herein as a result of said
15 defective condition of the PRODUCT, Plaintiff is informed, believes and thereon
16 alleges that notice was duly given by Plaintiff and other interested parties, presently
17 unknown, to the Defendant, in the time, manner and form prescribed by law, of the
18 aforesaid breach of said implied warranty.

19 5.4 As a proximate result of the breach of said implied warranty INSURED sustained the
20 damages described herein above.

21 5.5 INSURED was a foreseeable user of the said PRODUCT and suffered serious damages
22 while using said PRODUCT in the manner in which operators customarily and
23 ordinarily used the PRODUCT and in the manner in which the PRODUCT was
24 advertised, promoted, designed, manufactured, warranted and intended to be used by
25 Defendant.

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1 5.6 Such retail sale for use by the public was accompanied separately, individually and
2 respectively by the Defendant, express and implied warranties that the PRODUCT was
3 designed for the uses to which INSURED put the PRODUCT, that the PRODUCT was
4 merchantable, that the PRODUCT was free from defect in its design and manufacture,
5 and that the PRODUCT would not harm the INSURED, if used as intended and
6 expected by Defendant.

7 5.7 However, the Defendant breached its respective warranties implied and expressed in
8 the design, manufacture, and sale of the aforementioned PRODUCT in that the
9 PRODUCT was not fit for the specific or ordinary purposes for which said PRODUCT
10 was designed and manufactured to be used. The manner in which the PRODUCT was
11 designed, manufactured, and sold was insufficient to withstand the normal and
12 specified use for which it was intended to be used by INSURED. A material component
13 of said breaches occurred when Defendant willfully failed in the design, manufacture,
14 and sale of said PRODUCT to affix proper safety devices that if correctly designed,
15 manufactured and installed would have prevented the damages to the INSURED and/or
16 Plaintiff.

17 5.8 INSURED discovered such breach of express and implied warranties on or about
18 August 27, 2016, when the aforementioned PRODUCT failed and caused damages to
19 the INSURED as described herein.

20 5.9 The aforementioned conduct of the Defendant directly and proximately caused the
21 resulting damages sustained by Plaintiff.

22 5.10 As a further direct and proximate result of the aforementioned, but not limited to, defects
23 in the subject PRODUCT, design and manufacturing defects in said PRODUCT which
24 caused damage to the property of the INSURED, for which Plaintiff paid for the damage to
25 said property. Plaintiff, under the terms of its policy, thereby became subrogated to all of
26 the rights of INSURED in the sum paid and Plaintiff thereby became entitled to enforce all
27 of the remedies of INSURED against the Defendant with respect to same sum.

1 VI. PLAINTIFF'S DAMAGES

2 6.1 As a direct and proximate result of said Defendant, APPLE INC. negligence,
3 INSURED'S Business Property sustained significant damage all of which will be
4 proven at the time of Trial.

5 6.2 As a proximate result of said negligence by the Defendant and of the resulting damages
6 sustained by the INSURED, Plaintiff, under the terms of its policy, thereby became
7 subrogated to all of the rights of INSURED in the sum paid and Plaintiff thereby became
8 entitled to enforce all of the remedies of the INSURED against the Defendants with
9 respect to same sum.

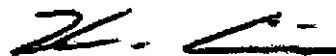
10 VII. DEMAND FOR RELIEF

11 7.1 WHEREFORE, Plaintiff prays for judgment against the Defendants for:

- 12 a. For damages in such amounts as shall be proven at the time of trial;
13 b. For costs and disbursements, including statutory and reasonable attorney fees;
14 c. For post-judgment interest on the entire judgment until paid in full; and,
15 d. For such other relief as the court deems just and proper.

16
17 DATED this 19th day of April, 2019.

LAW OFFICES OF MARK DIETZLER

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21 Kevin F. Smith, WSBA#45412
22 Attorney for Plaintiff, OHIO CASUALTY INSURANCE
23 CORPORATION, as Subrogee of IRIEN JENNINGS
24 DBA TOMFOOLERY PIZZA PUB
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10 CORPORATION, as Subrogee of IRIEN
11 JENNINGS DBA TOMFOOLERY PIZZA
12 PUB,

13 Plaintiff,

14 vs.

15 APPLE INC.,

16 Defendant.

NO. 19-2-00024-5

NOTICE OF APPEARANCE OF COUNSEL

17 TO: THE CLERK OF THE COURT

18 AND TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

19 **YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE** that the appearance of
20 defendant Apple Inc., without waiving objections to service of process, jurisdiction or venue, is
21 hereby entered in the above-entitled action through the undersigned attorneys. You are hereby
22 directed to serve all further papers and pleadings, except process, upon said attorneys, at the
23 address below stated.
24
25

NOTICE OF APPEARANCE OF
COUNSEL

- 1 -

Betts
Patterson
Mines
One Convention Place
Suite 1400
701 Pike Street
Seattle, Washington 98101-3927
(206) 292-9988

1 DATED this 21st day of May, 2019.

2 BETTS, PATTERSON & MINES, P.S.

3
4
5 By 

6 Christopher W. Tompkins, WSBA #11686

7 Natasha A. Khachatourians, WSBA #42685

8 One Convention Place

9 701 Pike Street, Suite 1400

10 Seattle, WA 98101

11 Phone: (206) 292-9988

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13 Email: ctompkins@bpmlaw.com

14 Email: nkhachatourians@bpmlaw.com

15 Attorneys for Defendant Apple Inc.

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NOTICE OF APPEARANCE OF
COUNSEL

- 2 -

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CERTIFICATE OF SERVICE

I, Karen L. Pritchard, declare as follows:

1) I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within entitled cause. I am employed by the law firm of Betts, Patterson & Mines, P.S., whose address is One Convention Place, Suite 1400, 701 Pike Street, Seattle, Washington 98101-3927.

2) By the end of the business day on May 21, 2019, I caused to be served upon counsel of record at the addresses and in the manner described below, the following document(s):

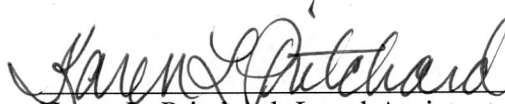
- **NOTICE OF APPEARANCE OF COUNSEL; and**
- **Certificate of Service.**

Counsel for Plaintiff Ohio Casualty Insurance Corporation
Kevin F. Smith
Law Offices of Mark Dietzler
1001 4th Ave Ste 3300
Seattle, WA 98154-1101
kevinf.smith@libertymutual.com

☐ U.S. Mail
☒ Hand Delivery
☐ Facsimile
☐ Overnight
☒ E-mail

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 21st day of May, 2019.


Karen L. Pritchard, Legal Assistant

NOTICE OF APPEARANCE OF
COUNSEL

- 3 -

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